

FW: 19DCP157K - Comment on the Draft Scope of Work

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The Environmental Protection Agency (EPA) has reviewed the Environmental Impact Statement (“EIS”) scoping documents, including the “Gowanus Neighborhood Rezoning and Related Actions Draft Scope of Work for an Environmental Impact Statement,” March 22, 2019, that were issued by New York City (“City”) for public comment. The proposed rezoning affects an area on and around the Gowanus Canal.

EPA does not have a role in local land-use or zoning decisions. However, understanding local land use is an important component in EPA’s planning of response actions under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” or “Superfund”). EPA also has a role in ensuring that future land use changes do not adversely affect the integrity of Superfund cleanups. With that context, EPA offers the following comments on the EIS scoping documents.

Background:

The Canal was constructed by bulkheading and dredging a tidal creek and wetland. After its completion in the 1860s, the Canal quickly became one of the nation’s busiest industrial waterways. As a result of decades of direct and indirect discharges of hazardous substances generated by industrial and other activities, the Canal became a repository for untreated industrial wastes, raw sewage, and runoff, causing it to become one of New York’s most polluted waterways.

Following a request from the New York State Department of Environmental Conservation (“NYSDEC”), EPA placed the Canal on the Superfund National Priorities List in March 2010. The Gowanus Canal Superfund Site (“Site”) is defined as the approximately 100-foot wide, 1.8-mile-long canal located in the borough of Brooklyn, Kings County, New York, and also includes any areas that are sources of contamination to the Canal.

In 2013, EPA issued a Record of Decision (“ROD”) for the cleanup of the Canal that included the dredging and off-Site disposal of the contaminated sediment in the Canal, the placement of a multilayer absorbing cap to prevent dissolved contamination from moving with the groundwater into the Canal waterbody, and the control of contamination from upland sources to prevent the recontamination of the clean Canal.

Such upland sources include certain levels of hazardous substances found in solids discharged into the Canal during Combined Sewer Overflow (“CSO”) events when stormwater and sanitary sewage capacity is exceeded within the approximately 1,758-acre Gowanus Canal watershed.

The CSO portion of the EPA-selected remedy includes the construction and operation of two CSO retention tanks by the City, a Potentially Responsible Party (“PRP”) for the Site. The City is currently preparing the CSO remedy design pursuant to two EPA administrative orders^[1] and participating in the dredging and capping remedial design, for which work in the upper portion of the Canal is targeted to begin in 2020. Progress on the Canal cleanup is among the factors cited by the City in proposing the rezoning.

In anticipation of potential redevelopment, the ROD requires that any future activities which fall under the City’s purview, including development, do not compromise the effectiveness of the Gowanus Canal remedy. Among other things, the ROD specifically states that *“redevelopment projects will need to take mitigation measures to prevent or offset additional sewer loadings”* to the Canal to protect the remedy.

EPA review of EIS Scoping Documents:

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EPA has reviewed the EIS scoping documents from the perspective of ensuring that the EIS process includes the proper assessment of and mitigation planning for any impacts that the rezoning actions may have on the effectiveness of the selected remedy.

In reviewing the EIS scoping documents, EPA notes that the City preliminarily projects a significant increase in the wastewater generation in the neighborhood as a result of the proposed development. Specifically, for residential development, wastewater generation is estimated to increase from 178,795 gallons per day (“gpd”) at present to 1,977,302 gpd once the proposed development has been completed. (See Gowanus Neighborhood Rezoning and Related Actions at Table B-1).

The EIS process should accurately determine the incremental volume of CSO-related discharges to the Canal and what appropriate mitigation measures, or combination of measures, are required to prevent an adverse effect on the EPA-selected remedy for the Canal.

EPA intends to work cooperatively with the City to ensure that the rezoning process is conducted in a manner that is, with respect to the Canal, protective of human health and the environment.

Sincerely,

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[1] Administrative Order for Remedial Design, Index Number CERCLA-02-2014-2019, issued by EPA on May 28, 2014, and Remedial Design, Removal Action and Cost Recovery, Index Number CERCLA-02-2016-2003 (the “RH-034 Tank AOC”), issued by EPA on June 9, 2016.

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